



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

E. Mark Braden, Esq.
Baker & Hostetler LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, NW
Washington, DC 20036

JAN 27 2009

RE: MUR 6033 (Stivers for Congress)

Dear Mr. Braden:

On July 10, 2008, the Federal Election Commission notified your clients, Stivers for Congress and Wade Steen, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On January 16, 2009, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Stivers for Congress and Wade Steen, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Kasey Morgenheim, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Stivers for Congress and Wade Steen,
in his official capacity as treasurer

MUR 6033

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election

Commission by Doug Kelly. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL SUMMARY

The complaint alleges that Stivers for Congress and Wade Steen, in his official capacity as treasurer (“Stivers Committee” or “Committee”), the Ohio Bankers League (“the OBL”), and Daniel Conklin (an OBL employee), violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended (“the Act”) and Commission regulations in conjunction with prohibited earmarked contributions solicited by the OBL for the Stivers Committee. Steve Stivers was a candidate in the 2008 election for the 15th Congressional District of Ohio; Stivers for Congress is his principal campaign committee. The OBL is a trade association for financial institutions that conduct business in Ohio and a non-profit corporation under Ohio law. Daniel Conklin is listed on the Statement of Organization for the Ohio Bankers League Political Action Committee (“the OBL PAC”), a separate segregated fund of the OBL, as custodian of records with the title of “PAC Specialist.”

The complaint's allegations are based on a fundraising invitation that states, "Please join the OBL for an evening with State Senator Steve Stivers Republican Candidate for Congress," and that the fundraising reception is "conducted in conjunction with the OBL CEO Symposium." The solicitation states that it is "Paid for by Stivers for Congress" and

1 that checks should be made payable to Stivers for Congress. The solicitation directs
2 recipients to return the enclosed response form and contributions to "Dan Conklin, Ohio
3 Bankers League, 4249 Easton Way, Suite 150, Columbus, Ohio 43219." The complaint
4 contends that these facts establish that earmarked contributions were directed by the
5 Respondents to the corporate headquarters of the OBL and to the attention of a corporate
6 representative, Daniel Conklin, in violation of the Act and Commission regulations.
7 Complaint at 4.

8 The available information suggests that the invitation was not sent by the OBL
9 itself, but instead sent by the OBL PAC to members of its restricted class to advise
10 members that they could send contribution checks to an officer of the OBL PAC for
11 delivery to the Stivers Committee. Sherran Blair, a former Chairwoman of the OBL, and
12 her husband volunteered to host a small fundraising event for the Stivers campaign in their
13 home on June 3, 2008. The OBL PAC agreed to print and mail invitations to the event
14 with the understanding that the printing and mailing costs would be paid by the Stivers
15 Committee. The Stivers Committee reviewed and approved the draft without raising any
16 concerns about the text.

17 The available information further suggests that the invitations were mailed to
18 members of the OBL's restricted class on April 30 and May 1, 2008. As a service to the
19 members who did not attend the event, the OBL PAC offered to serve as a conduit for
20 contributions to the Stivers Committee. A response submitted by the Stivers Committee
21 states that Conklin and other OBL employees received approximately 10-11 checks of \$250
22 payable to the Stivers Committee prior to the event. Committee Response at 2. After
23 obtaining a copy of the invitation on the day of the Blair event, the Ohio Democratic Party

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publicly claimed that the Blair invitation demonstrated that the OBL had made a prohibited corporate contribution to the Stivers Committee. Thereafter, the OBL PAC returned the contribution checks to the original contributors and informed them to deliver the checks to the Committee themselves. A representative of the Stivers Committee attended the Blair event and collected all checks. Burchard Affidavit (Attachment to Committee Response) ¶ 4. Thus, the OBL and the OBL PAC did not deliver any checks from members of the restricted class to the Stivers Committee. Committee Response at 2.

The Blair event took place as planned and the Blairs informed the Stivers Committee that food and beverages for the event cost \$475, and the Committee reported that amount as an in-kind contribution.¹ The OBL PAC received a check for the cost of printing and mailing the invitations to the event (\$811) from Stivers for Congress on July 14 or 15, 2008. An invoice for the printing and mailing costs is attached to the Committee response. The event raised approximately \$15,000 for the Stivers Committee. Committee Response at 2.

III. ANALYSIS

The Commission finds no reason to believe that Stivers for Congress and Wade Steen, in his official capacity as treasurer, violated 2 U.S.C § 441b(a).

The complaint alleges that the OBL, as a corporate entity, solicited prohibited earmarked contributions for the Stivers Committee. Under the Act, corporations are prohibited from making contributions or expenditures in connection with federal elections.

2 U.S.C. § 441b(a). Corporations are also prohibited from using corporate resources to

¹ When holding a campaign-related activity in his or her home, an individual may spend up to \$1,000 per candidate, per election, for food, beverage and invitations for the event without making a contribution. A husband and wife may together spend up to \$2,000 per candidate per election. Any amount spent in excess must be reported by the campaign as an in-kind contribution. 2 U.S.C. § 431(8)(B)(ii); 11 C.F.R. § 100.77.

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1 facilitate the making of contributions to federal candidates or political committees other
2 than through the corporation's separate segregated fund. 11 C.F.R. § 114.2(f)(1). This
3 prohibition extends to earmarked or directed contributions when corporations and their
4 officers, directors or other representatives, acting as agents, facilitate contributions by
5 using corporate or labor resources to engage in fundraising activities. *Id.* An earmarked
6 contribution is one which the contributor directs (either orally or in writing) to, or spends
7 on behalf of, a clearly identified candidate or candidate's committee through an
8 intermediary or conduit. 11 C.F.R. § 110.6(b)(1). A corporation prohibited from making
9 contributions in connection with federal elections may not act as a conduit for an
10 earmarked contribution, nor may an individual acting as a representative of that
11 corporation receive such contributions. 11 C.F.R. §§ 110.6(b)(2)(ii), (b)(2)(i)(A) and (E).
12 Accordingly, the Act prohibits the OBL from using corporate resources in order to solicit
13 and forward earmarked contributions for the Stivers Committee.

14 The solicitation in this matter only references the OBL. However, the complaint
15 does not allege that the solicitation was directed at individuals outside of the OBL's
16 restricted class, nor is there any indication of any corporate involvement in collecting the
17 earmarked contributions. Both Jeffrey Quayle and Daniel Conklin, the recipient of the
18 earmarked contributions, held official positions in the OBL PAC. Thus, the available
19 information indicates that the OBL did not use corporate resources to facilitate the making
20 of contributions to the Stivers Committee.

21 Unlike a corporation, a separate segregated fund may act as a conduit for an
22 earmarked contribution. 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.3(c)(2)(ii). The Commission's
23 regulations specifically exempt from the definition of prohibited corporate facilitation the

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1 solicitation of contributions to a candidate or political committee by a separate segregated
2 fund, and the collection and forwarding of contributions earmarked to a candidate by a
3 separate segregated fund. 11 C.F.R. § 114.2(f)(3)(i) and (ii). Additionally, prohibited
4 corporate facilitation does not include a corporation soliciting contributions to be sent
5 directly to candidates if the solicitation is directed to the restricted class, nor does it include
6 a corporation soliciting earmarked contributions for a candidate that are to be forwarded
7 by the corporation's separate segregated fund, to the extent that such contributions are
8 also treated as contributions to and by the separate segregated fund. 11 C.F.R. §
9 114.2(f)(4)(ii) and (iii). Thus, the OBL, as a corporation, would have been permitted to
10 solicit contributions earmarked for the Stivers Committee to be forwarded by the OBL
11 PAC, its separate segregated fund, to the extent that the contributions were treated as
12 contributions to and by the OBL PAC. The available information indicates that the OBL
13 PAC, not the OBL itself, originally intended to act as a conduit for the earmarked
14 contributions had the contributions not been returned to the original contributors.

15 Consequently, this matter differs from other matters where the Commission has
16 found reason to believe that corporations violated the Act in connection with corporate
17 facilitation and solicitation of earmarked contributions. *See* MUR 5573 (Westar)
18 (Commission found reason to believe that Westar, a public corporation, violated the Act by
19 facilitating contributions and acting as a conduit for prohibited earmarked contributions).

20 In the present matter, contributions were not solicited outside of OBL's restricted
21 class. Further, although the solicitation directs recipients to return contributions to Daniel
22 Conklin at the OBL, Conklin held an official position with the OBL PAC and is listed as
23 "PAC Specialist" on the OBL PAC's Statement of Organization. Moreover, the 2008 July

1 Quarterly Reports filed by the OBL PAC and the Stivers Committee did not disclose any
2 contributions that appeared to be forwarded from the OBL PAC to the Committee and a
3 sworn affidavit in the Stivers Committee response states that the OBL, OBL PAC, and
4 Daniel Conklin did not act as conduits for any contributions to Stivers for Congress.
5 Rather, the PAC returned all contributions received before the event to the contributors,
6 and a Committee representative collected all of the checks at the event. The Commission's
7 regulations require a person who is prohibited from acting as a conduit to return the
8 earmarked contribution to the contributor. 11 C.F.R. § 110.6(b)(2)(iii)(B). Thus, even if
9 the earmarked contributions had been prohibited under the Act, the remedy would have
10 been for the contributions to be returned. By proactively returning the contributions to the
11 contributors, the OBL PAC acted in accordance with the Commission's regulations, thus
12 avoiding any possible violations. Accordingly, there is no reason to believe that Stivers for
13 Congress and Wade Steen, in his official capacity as treasurer, violated 2 U.S.C § 441b(a).

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